

Federal Deposit Insurance Corporation

§ 349.2

- 349.2 Definitions.
- 349.3 Prohibited transactions.
- 349.4 Filing procedures.
- 349.5 Application and closing out of offsetting long and short positions.
- 349.6 Disclosure.
- 349.7 Recordkeeping.
- 349.8 Capital requirements.
- 349.9 Margin requirements.
- 349.10 Required reporting to customers.
- 349.11 Unlawful representations.
- 349.12 Authorization to trade.
- 349.13 Trading and operational standards.
- 349.14 Supervision.
- 349.15 Notice of transfers.
- 349.16 Customer dispute resolution.

AUTHORITY: 12 U.S.C.1813(q), 1818, 1819, and 3108; 7 U.S.C. 2(c)(2)(E), 27 *et seq.*

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§ 349.1 Authority, purpose, and scope.

(a) *Authority.* An FDIC-supervised insured depository institution that engages in retail forex transactions shall comply with the requirements of this part.

(b) *Purpose.* This part establishes rules applicable to retail forex transactions engaged in by FDIC-supervised insured depository institutions and applies on or after the effective date.

(c) *Scope.* Except as provided in paragraph (d) of this section, this part applies to FDIC-supervised insured depository institutions.

(d) *International applicability.* Sections 349.3 and 349.5 to 349.16 do not apply to retail foreign exchange transactions between a foreign branch of an FDIC-supervised IDI and a non-U.S. customer. With respect to those transactions, an FDIC-supervised IDI must comply with any disclosure, recordkeeping, capital, margin, reporting, business conduct, documentation, and other requirements of applicable foreign law.

§ 349.2 Definitions.

For purposes of this part—

The following terms have the same meaning as in the Commodity Exchange Act: “Affiliated person of a futures commission merchant”; “Associated person”; “Contract of sale”; “Commodity”; “Eligible contract participant”; “Futures commission merchant”; “Security”; and “Security futures product”.

Affiliate has the same meaning as in §2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)).

Commodity Exchange Act means the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

FDIC-supervised insured depository institution means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to §3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

Forex means foreign exchange.

Institution-affiliated party or *IAP* has the same meaning as in 12 U.S.C. 1813(u)(1), (2), or (3).

Insured depository institution or *IDI* has the same meaning as in 12 U.S.C. 1813(c)(2).

Introducing broker means any person who solicits or accepts orders from a retail forex customer in connection with retail forex transactions.

Related person, when used in reference to a retail forex counterparty, means:

(1) Any general partner, officer, director, or owner of ten percent or more of the capital stock of the FDIC-supervised insured depository institution;

(2) An associated person or employee of the retail forex counterparty, if the retail forex counterparty is not an FDIC-supervised insured depository institution;

(3) An IAP, if the retail forex counterparty is an FDIC-supervised insured depository institution; and

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons.

Retail forex account means the account of a retail forex customer, established with an FDIC-supervised insured depository institution, in which retail forex transactions with the FDIC-supervised insured depository institution as counterparty are undertaken, or the account of a retail forex customer that is established in order to enter into such transactions.

Retail forex account agreement means the contractual agreement between an FDIC-supervised insured depository institution and a retail forex customer that contains the terms governing the customer's retail forex account with

the FDIC-supervised insured depository institution.

Retail forex business means engaging in one or more retail forex transactions with the intent to derive income from those transactions, either directly or indirectly.

Retail forex counterparty includes, as appropriate:

- (1) An FDIC-supervised insured depository institution;
- (2) A retail foreign exchange dealer;
- (3) A futures commission merchant; and
- (4) An affiliated person of a futures commission merchant.

Retail forex customer means a customer that is not an eligible contract participant, acting on his, her, or its own behalf and engaging in retail forex transactions.

Retail forex obligations means obligations of a retail forex customer with respect to retail forex transactions, including, but not limited to, trading losses, fees, and commissions.

Retail forex proprietary account means: a retail forex account carried on the books of an FDIC-supervised insured depository institution for one of the following persons; a retail forex account of which 10 percent or more is owned by one of the following persons; or a retail forex account of which an aggregate of 10 percent or more of which is owned by more than one of the following persons:

- (1) The FDIC-supervised insured depository institution;
- (2) An officer, director or owner of ten percent or more of the capital stock of the FDIC-supervised insured depository institution; or
- (3) An employee of the FDIC-supervised insured depository institution, whose duties include:
 - (i) The management of the FDIC-supervised insured depository institution's business;
 - (ii) The handling of the FDIC-supervised insured depository institution's retail forex transactions;
 - (iii) The keeping of records, including without limitation the software used to make or maintain those records, pertaining to the FDIC-supervised insured depository institution's retail forex transactions; or

(iv) The signing or co-signing of checks or drafts on behalf of the FDIC-supervised insured depository institution;

(4) A spouse or minor dependent living in the same household as of any of the foregoing persons; or

(5) An affiliate of the FDIC-supervised insured depository institution;

Retail forex transaction means an agreement, contract, or transaction in foreign currency, other than an identified banking product or a part of an identified banking product, that is offered or entered into by FDIC-supervised insured depository institution with a person that is not an eligible contract participant and that is:

(1) A contract of sale of a commodity for future delivery or an option on such a contract;

(2) An option, other than an option executed or traded on a national securities exchange registered pursuant to §6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78(f)(a)); or

(3) Offered or entered into on a leveraged or margined basis, or financed by an FDIC-supervised insured depository institution, its affiliate, or any person acting in concert with the FDIC-supervised insured depository institution or its affiliate on a similar basis, other than:

(i) A security that is not a security futures product as defined in §1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)); or

(ii) A contract of sale that—

(A) Results in actual delivery within two days; or

(B) Creates an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business; or

(iii) An agreement, contract, or transaction that the FDIC determines is not functionally or economically similar to:

(A) A contract of sale of a commodity for future delivery or an option on such a contract; or

(B) An option, other than an option executed or traded on a national securities exchange registered pursuant to Section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78(f)(a)).